

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL
WITH PROOF
OF SERVICE

77-1279

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

B
PJS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

ROBERT A. GUBELMAN, SR.,

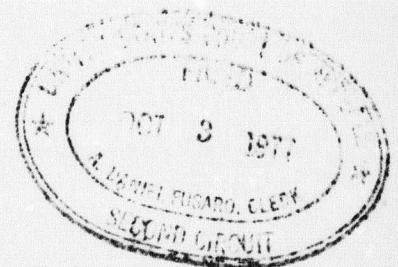
Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX

WINDELS & MARX
Attorneys for Defendant-Appellant
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U.S. Attorney for the
Southern District of New York
Attorney for Plaintiff-Appellee
One St. Andrew's Plaza
New York, N.Y. 10007
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PAGINATION AS IN ORIGINAL COPY

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A-1
DOCKET ENTRIES IN 76 CR 1041

OFFENSE NO. JUDGE/MAGISTRATE Assigned
OFFENSE NO. 0208 1
OFFENSE NO. 0208 1
FELONY ☒ Misdemeanor ☐
U.S. District Court (LAST FIRST MIDDLE)

GUBELMAN, ROBERT A., SR.

Case Filed No. 11 09 76 1041 01
No. of Dets. 01
JUVENILE ☐ ADULT ☒

U.S. TITLE SECTION	OFFENSES CHARGED	ORIGINAL COUNTS
21:622	Federal meat inspector accepting money from company engaged in interstate commerce	1-3
21:622	Federal meat inspector accepting money from company engaged in interstate commerce	1-3

5/11

U.S. MAG. CASE NO.

EARL • RELEASE

☐ AMT. ☐ Fugitive
☐ Set ☐ Pers. Recog.
☐ S. 000 ☐ PSA
☐ Date ☐ Conditions
☐ Bail Not Made ☐ 10% Deposit
☐ Status Changed (See Docket) ☐ Surety Bond
☐ 3rd ☐ Conateral
☐ Pry Cust. Other

II. KEY DATES & INTERVALS

ARREST or	INDICTMENT	ARRAIGNMENT	TRIAL
U.S. Custody Began	Information 11-9-76	11-18-76	Trial Set For
Summons Served	Indict. Waived	1st Plea 11-18-76	Trial Began 4-12-77
First Appearance	Superseding Indictment 3-10-77	Final Plea	Trial Ended 4-18-77

SENTENCE

Disposition of Charges 4-18-77

☐ Convicted ☐ On All Charges
☐ Acquitted ☐ On Lesser Offenses
☐ Dismissed ☐ WOP: ☐ WP
☐ On Government's Motion

MAGISTRATE		INITIAL NO.	OUTCOME
Summons Issued	DATE	INITIAL NO.	DISMISSED
Summons Served	DATE	INITIAL NO.	HELD FOR OR OTHER PROCEEDING IN THIS DISTRICT
Summons Issued	DATE	INITIAL NO.	HELD FOR OR OTHER PROCEEDING IN DISTRICT BELOW
Summons Served	DATE	INITIAL NO.	

U.S. Attorney or Asst.

Lawrence Iason
791-0042

ATTORNEYS

C. John Prince
8902 Sutphin Blvd., Jamaica Queens 11435
653 5500

DATE	DOCUMENT NO.	PROCEEDINGS	EXCLUDABLE DELAY
11-9-76		Filed Indictment.....Cooper, J.	
11-18-76		Def't. (atty. present) Pleads not guilty. R.O.R. Referred to Judge Pierce as related to 76 Cr 1027. Cannella, J.	
11-24-76		Filed Notice of Appearance by C. John Prince, 8902 Sutphin Blvd., Jamaica Queens 11435, Tel. 653 5500.	
11-22-76		Reassigned to Judge Cooper.	
3-10-77		Filed Superseding Indictment & referred to Cooper, J.Bryan, J.	
4-12-77		Filed Govts. Request to Charge.	
4-12-77		Filed Govts. Request for the Voir Dire.	
4-12-77		Filed Govts. Memorandum of Law on the Admissability of Proof of Similar Acts.	

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DOCKET ENTRIES IN 76 CR 1041

DATE	DESCRIPTION
4-14-77	Dftd Govts. Notice of Motion for order quashing subpoenas duces tecum.
4-14-77	Filed Memo. Ent. on motion dtd. 4-14-77. Motion Granted. See Official Court Reporters minutes of this day.....Cooper J. (mn)
4-14-77	Filed Govts. Affdvt. by Lawrence Iason .
4-12-77	Jury Trial Begun Before Cooper J.
4-13-77	Trial Continued. Govt. Moves to Sever Count 2. Motion Granted. New Superseding Indictment Count 3 On this Ind. becomes Count 2.
4-14-77	Trial Cont'd
4-15-77	Trial Cont'd
4-18-77	Trial Cont'd & Concluded - Jury Verdict. Dft. Guilty on Counts 1 & 2 Motion made & denied. Pre Sentence report Ordered. PROBATION NOTIFIED. Sentence May 23, 1977 @ 12:30. PM. R.O.R.Cooper J.
5-11-77	Filed government's sentencing memorandum
5-17-77	Filed Dfts. Notice of Motion & supporting papers for an order reducing sentence imposed pur. to R.35 FRCrP.
5-17-77	Filed Dfts. Notice of Appeal from Judgment Ent. 5-11-77. (mn)
5-11-77	Filed judgment and commitment ... The deft is committed to the custody of the Attny General or his authorized representative for imprisonment for a period of TWO (2) YEARS on Count 1 and 2 to run concurrently. Deft is ordered to surrender MAY 24, 1977 at 10 AM Room 506. The deft is released on his own recognizance pending surrender. Cooper J. Issued commitment 5-20-77.
5-20-77	Filed Govts. Affdvt. in opposition to motions seeking reduction of Sentence, etc.
5-23-77	Ct. 2 Dismissed.....Cooper J.
6-2-77	Filed transcript of record of proceedings, dated 4/13-77
6-6-77	Filed certification and transmittal of original record to the USC for the 2nd Circuit .
8-31-77	Filed transcript record dtd: 4/13, 14, 15/77, 4/18/77, 5/13, 15/77
8-31-77	Filed notice of certification and transmittal of supplemental record to the USCA
9-19-77	Filed transcript of record of proceedings, dated 5-11-77 of 2nd supplemental record to USCA.

slc
141

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

76 CR 1041

UNITED STATES OF AMERICA

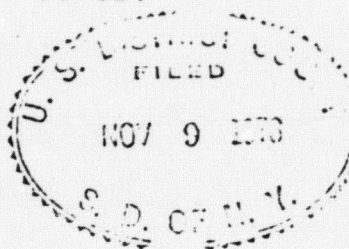
- v -

ROBERT A. GUBELMAN, SR.,

Defendant.

INDICTMENT

76 Cr.



INTRODUCTION

The Grand Jury charges:

1. The Federal Meat Inspection Act, enacted on December 15, 1967 as Title I of the Wholesome Meat Act, requires the Secretary of Agriculture to provide for the inspection of establishments where meat and meat food products are processed.

2. At all times relevant to this Indictment, the defendant ROBERT A. GUBELMAN, SR. was an inspector, officer and employee of the United States Department of Agriculture, Meat and Poultry Inspection Program, authorized to perform the duties required by the Federal Meat Inspection Act of 1967.

3. At all times relevant to this Indictment, the Western Meat Company, Inc., located at 520 Westchester Avenue, Bronx, New York, was engaged in interstate commerce and was inspected by inspectors, officers and employees of the United States Department of Agriculture, Meat and Poultry Inspection Program pursuant to the Federal Meat Inspection Act of 1967.

4. At all times relevant to this Indictment, Plaut & Stern, Inc., located at 524 Westchester Avenue,

Bronx, New York, was engaged in interstate commerce and was inspected by inspectors, officers and employees of the United States Department of Agriculture, Meat and Poultry Inspection Program pursuant to the Federal Meat Inspection Act of 1967.

5. At all times relevant to this Indictment, Master Purveyors, Inc., located at 841 Washington Street, New York, New York, was engaged in interstate commerce and was inspected by inspectors, officers and employees of the United States Department of Agriculture, Meat and Poultry Inspection Program pursuant to the Federal Meat Inspection Act of 1967.

COUNT ONE

The Grand Jury further charges:

From on or about the 11th day of November 1972, up to and including the 25th day of November 1972, in the Southern District of New York, the defendant ROBERT A. GUBELMAN, SR. unlawfully, wilfully and knowingly did receive and accept from Master Purveyors, Inc. money and other things of value, that is, approximately \$25 weekly.

(Title 21, United States Code, Section 622.)

COUNT TWO

The Grand Jury further charges:

A-5
INDICTMENT IN 76 CR 1041

During the approximate time periods listed below, in the Southern District of New York, the defendant ROBERT A. GUBELMAN, SR. unlawfully, wilfully and knowingly did receive and accept from the Western Meat Company, Inc. money and other things of value, that is, approximately \$20 weekly:

Approximate Time Periods

April 23 and April 24, 1973

June 7 and June 8, 1973

October 1, 2 and 5, 1973

(Title 21, United States Code, Section 622.)

COUNT THREE

The Grand Jury further charges:

During the approximate time periods listed below, in the Southern District of New York, the defendant ROBERT A. GUBELMAN, SR. unlawfully, wilfully and knowingly did receive and accept from Plaut & Stern, Inc. money and other things of value, that is, approximately \$25 weekly:

Approximate Time Periods

April 17 through April 20, 1973

May 1 through May 12, 1973

September 2 through September 15, 1973

November 27 through November 30, 1973

Joseph J. McLaughlin
FOREMAN

Robert B. Fiske, Jr.
ROBERT B. FISKE, JR.
United States Attorney

A-5
SUPERSEDING INDICTMENT IN 76 CR 1041

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v -

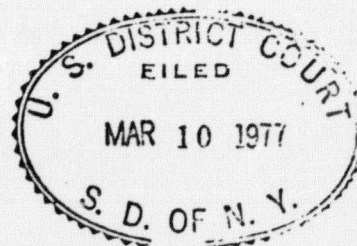
ROBERT A. GUBELMAN, SR.,

Defendant.

(S) 76 CR 1041

INDICTMENT

S 76 Cr. 1041



- - - - -x
INTRODUCTION

The Grand Jury charges:

1. The Federal Meat Inspection Act, enacted on December 15, 1967 as Title I of the Wholesome Meat Act, requires the Secretary of Agriculture to provide for the inspection of establishments where meat and meat food products are processed.

2. At all times relevant to this Indictment, the defendant ROBERT A. GUBELMAN, SR. was an inspector, officer and employee of the United States Department of Agriculture, Meat and Poultry Inspection Program, authorized to perform the duties required by the Federal Meat Inspection Act of 1967.

3. At all times relevant to this Indictment, the Western Meat Company, Inc., located at 520 Westchester Avenue, Bronx, New York, was engaged in interstate commerce and was inspected by inspectors, officers and employees of the United States Department of Agriculture, Meat and Poultry Inspection Program pursuant to the Federal Meat Inspection Act of 1967.

4. At all times relevant to this Indictment, Plaut & Stern, Inc., located at 524 Westchester Avenue, Bronx, New York, was engaged in interstate commerce and

was inspected by inspectors, officers and employees of the United States Department of Agriculture, Meat and Poultry Inspection Program pursuant to the Federal Meat Inspection Act of 1967.

5. At all times relevant to this Indictment, Master Purveyors, Inc., located at 841 Washington Street, New York, New York, was engaged in interstate commerce and was inspected by inspectors, officers and employees of the United States Department of Agriculture, Meat and Poultry Inspection Program pursuant to the Federal Meat Inspection Act of 1967.

COUNT ONE

The Grand Jury further charges:

During the approximate time periods listed below, in the Southern District of New York, the defendant ROBERT A. GUBELMAN, SR. unlawfully, wilfully and knowingly did receive and accept from Master Purveyors, Inc. money and other things of value, that is, approximately \$25 weekly:

Approximate Time Periods

August 20 through November 25, 1972

December 10, 1972 through January 6, 1973.

(Title 21, United States Code, Section 622.)

COUNT TWO

The Grand Jury further charges:

A-8
SUPERSEDING INDICTMENT IN 76 CR 1041

During the approximate time periods listed below, in the Southern District of New York, the defendant ROBERT A. GUBELMAN, SR. unlawfully, wilfully and knowingly did receive and accept from the Western Meat Company, Inc. money and other things of value, that is, approximately \$20 weekly:

Approximate Time Periods

April 23 and April 24, 1973

June 7 and June 8, 1973

October 1, 2 and 5, 1973

November 27 through November 30, 1973.

(Title 21, United States Code, Section 622.)

COUNT THREE

The Grand Jury further charges:

During the approximate time periods listed below, in the Southern District of New York, the defendant ROBERT A. GUBELMAN, SR. unlawfully, wilfully and knowingly did receive and accept from Plaut & Stern, Inc. money and other things of value, that is, approximately \$25 weekly:

Approximate Time Periods

April 17 through April 20, 1973

May 1 through May 12, 1973

September 2 through September 15, 1973

November 27 through November 30, 1973

(Title 21, United States Code, Section 622.)

Joseph Friedman
FOREMAN

Robert B. Fiske, Jr.
ROBERT B. FISKE, JR.
United States Attorney

A-9
CHARGE TO THE JURY

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J. Cooper
Gubelman
Charge
4/18/77

1 jhrp 1

2 A F T E R N O O N S E S S I O N (2:15 p.m.)

3 (In open court. Jury present.)

4 THE COURT: Madam Forelady, ladies and gentle-
5 men of the jury:

6 I would be remiss, sadly remiss, if I failed
7 at the very outset of the Judge's charge to the jury to
8 express to each one of you, and I am sure counsel on
9 both sides join me in this, the keen satisfaction that comes
10 to the Court and to counsel for the undivided attention
11 that you gave this case, and you demonstrated it through-
12 out the course of this trial.

13 It is evident that you have discharged your
14 duty so far with fidelity. You have followed the testimony
15 with intelligent understanding and absorbing interest.
16 I am quite satisfied that no single fact matter relating
17 to the factual issues in this case has escaped your atten-
18 tion.

19 You have been silent throughout and when your
20 turn comes to speak, I have every confidence that in
21 accordance with the solemnity of your oath and the high
22 order of your conscience, you will pronounce the justice
23 due in this case.

24 Your selection was the result of great care
25 exercised by Court and counsel. Your mission is not easy

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CHARGE TO THE JURY

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1 jhrp 2

2 and we are sure you did not expect it to be.

3 A distinguished philosopher, Albert Camus, a
4 Nobel Prize winner, summed it up for all of us, for you,
5 for counsel, for the Judge, when he wrote that justice
6 dies from the moment it becomes a comfort, when it ceases
7 to be a burning reality, a demand upon one's self.

8 That is what I tried to convey during the
9 time that you were being selected. You recall I spent
10 almost three hours' repeating and repeating and repeating
11 the high order of your oath and each one of you, on the
12 record, committed yourselves to discharge your sworn
13 obligation by taking into consideration absolutely nothing
14 other than the evidence and the law applicable thereto.

15 The lawyers are not on trial. They have per-
16 formed their undertaking according to their lights and
17 with ardor. The evidence and the law applicable to that
18 evidence is what is before you and you will address
19 yourselves exclusively to that. Whether you like the
20 Judge or you do not like the Judge or whether you like this
21 lawyer or like the other lawyer more has not got a blessed
22 thing to do with your undertaking.

23 Let me say a word about objections from counsel
24 that have been interposed from time to time. Please under-
25 stand that counsel under our law not only have the right,

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CHARGE TO THE JURY

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1 jhrp 3

2 but it is indeed their duty on the offer of certain evi-
3 dence to press whatever legal objections there may be to
4 its admission.

5 With these comments about counsel we take
6 leave of them and we concern ourselves exclusively with
7 the parties involved in this litigation, the government,
8 otherwise known in law as the plaintiff, in this proceed-
9 ing, and on the other side, the defendant. This is not a
10 contest in salesmanship. It is not a battle of wits. It
11 is not a clash of personalities. It is by law pronounced
12 to be a conscientious search for the truth. And if you
13 can leave this courthouse with the firm conviction that
14 your verdict is consistent with the truth, then indeed
15 your duty will have been done, because the only triumph
16 in any litigated case, whether it be civil or criminal,
17 is the triumph of the truth.

18 As I told you when you were being selected,
19 every defendant, every defendant, regardless of race,
20 creed, color, age, regardless of impediments of any kind,
21 is entitled to a fair trial under our law, and the very
22 same legal propositions of law must be charged by the
23 Court to the jury regardless of who the defendant is,
24 whether he is successful or waiting for success, highly
25 esteemed or despised, whether he is a member of a good or

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CHARGE TO THE JURY

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1 jhrp 4

2 bad family, yes, even the avowed enemy of our society.
3 Each is entitled to his day in court and let justice be
4 done according to the facts and according to the law in
5 the case. And that is what America stands for.

6 You do not sit here as barons of old that
7 you read about in your school books, the barons who assemble
8 and by whim, favor or caprice, by likes or dislikes, decided
9 who was going to be flung into jail and who went free
10 and who got the bag of gold or who was compelled to
11 resign in abject poverty.

12 You have no such power, any more than I have.
13 Your duty is to be the judges of the facts and apply the
14 law to the facts, no matter who likes it or who does not
15 like it, and let the chips fall where they may. You
16 are here to determine the guilt or innocence of this
17 defendant. Neither you nor I are here to please or favor
18 anyone. We have a sworn duty to perform and must discharge
19 it if justice is to prevail.

20 After all, it is your justice, your court-
21 house, for black, for white, for poor, for rich. It is
22 your burden as much as my burden and you have got to get
23 exercised about the doing of justice as much as the Judge.

24 We have reached the point where you are soon
25 to undertake your final function as jurors and here you

1 jhrp 5

2 perform one of the most sacred obligations and responsi-
3 bilities of citizenship. You are, and make no mistake
4 about it, the ministers of justice, as the Supreme Court
5 of the United States has said referring to you. You are
6 to approach your duties in an attitude of complete fairness,
7 complete impartiality, and to appraise the evidence calmly
8 and deliberately, and as was emphasized by me when you
9 were being selected, without the slightest trace of
10 sympathy, bias or prejudice for or against the government
11 or the defendant, who are the only parties to this contro-
12 versy.

13 I learned this since I was a boy on my own at
14 ten. Be satisfied with the applause of your own conscience.

15 What I have just said to you is as important
16 a part of this charge by the Court as any other part.
17 Never forget for an instant that you and you alone
18 are the sole and exclusive judges of the facts. Its
19 equivalent is found when it comes to law, where the Judge
20 is the sole and exclusive judge of the law.

21 You heard counsel press various legal points
22 before me and when I disagreed you heard me take a definite
23 position and if I agreed I said so. You do likewise as
24 to the facts, no matter who it suits.

25 Remember, you and only you are the judges of

A-14
CHARGE TO THE JURY

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1 jhrp 6

2 the facts. You call them as you see them. To use the
3 same expression I used while you were being selected, you
4 call them as they come across the plate. If this trial
5 is nothing more than an idle performance, well, then,
6 heaven help us all. It would be a jungle, just what a
7 lot of people would like to turn it into.

8 I think it is worthwhile as American citizens
9 to reflect on these points that are a part of the law
10 in this case. The powerful United States of America
11 comes into court and starts the contest right at the same
12 mark with the defendant. Do you know in some countries,
13 some civilized countries, when the government starts a
14 case the government is already on second base, just the
15 very fact that the government is in the courtroom. In
16 America we say you both start at the same spot, you take
17 off from the same common place. And so the fact that
18 the United States Government comes into this courtroom
19 and levels a charge on behalf of the people against this
20 defendant now before us, the government starts just where
21 the defendant starts. It has no advantage whatever. But
22 it is entitled to no less consideration than any other
23 litigant.

24 This may surprise you, but a trial judge in
25 the United States District Court has a perfect right to

A-15
CHARGE TO THE JURY

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1 jhrp 7

2 comment on the evidence. That is unlike what you have
3 heard in other courts. I have the power, if I wish to
4 exercise it, in any case, civil or criminal, to say to
5 a jury, after telling them what their powers are, that in
6 my opinion Witness X, who took the stand, was nothing but
7 a corrupt liar and I would not believe him on a stack of
8 bibles from the floor to the ceiling. All I need to add
9 is "But you are not bound by my estimate. You are the
10 judges of the facts." Or I can say of another witness,
11 "In my opinion that witness spoke the gospel truth, but
12 you the jury are not bound by my estimate." I can tell
13 you then how I feel about the facts. I can comment on
14 them openly, distinctly pointing out, however, that you
15 and you alone are the judges of the facts.

16 I shall do no such thing. I never have. I don't
17 believe that I should praise you, do you honor, rise when
18 you come in -- why do I do that? As a sign of respect
19 for the enormity of the burden that you carry -- I don't
20 believe that I should praise you, do you honor, speak of
21 you as the ministers of justice, and then invade the orbit
22 of your function. To me that is talking out of both sides
23 of one's mouth. That is your responsibility and you are
24 going to have to meet it and I have no doubt that you will.

25 I have no view whatever as to the guilt or

A-16
CHARGE TO THE JURY

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1 jhrp 8

2 innocence of this defendant. My sole purpose and function
3 is to see that both sides receive a fair trial according
4 to law and the case is decided in accordance with the
5 evidence and the law.

6 What more can a judge say than what I told
7 you when you were being selected, that the fact-finding
8 function often proves more burdensome than laying down
9 the law. I know, for the greater part of my own life
10 has been spent as a fact-finder.

11 Since I have the power to talk about the
12 evidence, and even give you my evaluation of it, I dis-
13 tinctly forbid you from reading into the tone of my voice
14 or the emphasis that I may apply here or thereto a
15 proposition of law how the Judge feels about the facts.
16 If I wanted to tell you I would tell you outright,
17 since I have a perfect right to do it.

18 I have long fought for the proposition that
19 if you have got something you believe in you go up the
20 front way, do not go sneaking around the back. So that
21 if I wanted to tell you my impression of some of the
22 evidence I would come right up the front way, because
23 I have the power to do it. I do not have to resort to
24 innuendo or shake my head or look away with a little
25 question mark. I do not have to resort to any of that.

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CHARGE TO THE JURY

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1 jhrp 9

2 I can tell you exactly the way I feel. But I do not
3 believe in it, I do not do it.

4 My function is to instruct you as to the law
5 and it is your sworn duty -- you remember I emphasized
6 that while you were being selected -- you must under your
7 oath apply the law as I state it to you in these instruc-
8 tions and apply it to the facts as you the jury find them
9 to be. Your oath compels you to apply the law regardless
10 of your personal opinion as to the wisdom or the rightness
11 of any part of the law. I emphasized that too when you
12 were being selected.

13 I speak very plainly when I tell you that
14 your oath compels you to apply the law as laid down in
15 these instructions. It is unthinkable that a jury would
16 do otherwise, for that would be the same as a lawyer
17 violating his oath, for which he could be disbarred, or
18 a judge violating his oath, for which he could be removed
19 from judicial office. You must never forget that you
20 sit here as American ministers of justice, compelled by
21 your oath and your conscience to determine the guilt or
22 innocence of this defendant, based exclusively on the
23 trial record before you.

24 What do we mean by the total trial record?
25 We mean the sworn testimony, the exhibits, the stipulations

1 jhrp 10

2 entered into by both sides, and the instructions of the
3 Court.

4 Now, with regard to any fact matter, it is
5 your recollection and yours alone, as I have already told
6 you, not what counsel remember or anything that I may
7 comment on. Anything that counsel either for the govern-
8 ment or for the defense may have said with respect to
9 matters in evidence, whether during the trial or in a
10 question or in an argument or in summation, is not to be
11 substituted for your own recollection of the evidence.
12 And so anything that I may refer to. If my recollection
13 does not accord with yours, your recollection prevails.
14 Your recollection is paramount.

15 Before we consider the charges lodged against
16 this defendant and what is required to sustain each charge
17 against him there are certain preliminary observations
18 that are in order, certain principles of law that are
19 applicable to every criminal case, and to almost every one
20 of them I referred at the time of your selection as jurors.
21 Such is human nature that people apply the term boilerplate
22 to these fundamental principles of law which have been
23 hammered out by blood and sweat and are a part, and a
24 glorious part, of our country's judicial history. They
25 are not boilerplate to me. I have said them hundreds of
times and on each occasion I regard myself privileged to

1 j hrp 11

2 pronounce these sacred propositions of law.

3 One of them is that an indictment is merely
4 an accusation, a charge. It is a method by which persons
5 accused by a grand jury of crimes are brought into court
6 and their guilt or innocence is determined by a trial
7 jury, such as you are. It is no evidence whatever of
8 guilt of a defendant and you will not give any weight
9 whatsoever to the fact that an indictment has been returned
10 against this defendant.

11 He has pleaded not guilty, he had a right to
12 plead not guilty, and the government under our law has
13 the burden of proving guilt beyond a reasonable doubt,
14 which I shall define shortly, as I shall other terms that
15 I use.

16 We say under our law that the government has
17 the burden of proving each charge, each count against
18 the defendant, and proving each count as to the defendant
19 beyond a reasonable doubt.

20 Now, when I say that, that does not mean to
21 imply that I think the government has not done so or that
22 the government has succeeded. I have got to lay down
23 these principles of law firmly and you the jury apply
24 them to the facts as you find them to be. Remember, I
25 take no position here on the facts. After all, ladies

1 jhrp 12

2 and gentlemen of the jury, what does the word instructions
3 by the Judge mean? The law says that the Judge has to
4 instruct you. It does not mean to give you some phraseology
5 and some legal terms which fall on your ears for the
6 first time and leave you troubled and uncertain. Not at all
7 It means teach the jury, somehow convey to the jury the
8 essence, the substance, the purport and the directive of
9 each proposition of law applicable in the case.

10 Just contemplate the glory of our law when
11 it comes to the presumption of innocence, which I mentioned
12 with a great deal of emphasis while you were being selected.
13 I told you then and I tell you again that the burden is
14 on the government to prove a person guilty and to prove
15 that person guilty beyond a reasonable doubt, and that
16 burden never shifts from the government to any defendant.
17 The government has to bear that burden throughout the
18 entire trial, from beginning to end, from start to finish.
19 It is our law that a defendant does not have to prove his
20 innocence. On the contrary, the defendant is presumed
21 to be innocent of the accusation contained in the
22 indictment. This goes back to the time when men were
23 put on the rack and tormented and tortured and made to
24 give utterances that condemned them to death.

25 And so the very purport and the very sinew
of the Constitution of the United States in essence is

A-21
CHARGE TO THE JURY

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2 this, that based on the history of mankind no man shall
3 be made to testify against himself, no man shall have
4 to prove his innocence. If you have something against
5 a man of the nature of a criminal charge then you prove
6 it and prove it beyond a reasonable doubt. If that is
7 not the glory of the civilized world tell me what is.
8 The fact that it is not upheld and glorified and honored
9 by those who have permission to honor it and to make it
10 viable every day, a tangible concept translated into
11 living performance, is not my fault. But that is the law.
12 This presumption of innocence is a protective shield which
13 covers a defendant. It is in his favor right now as I
14 talk to you. At this very moment our law says that that
15 shield of the presumption of innocence surrounds this
16 defendant during the course of the entire trial. It even
17 continues to shield him while you are in deliberation.

18 It is removed, this presumption of innocence,
19 this shield, only when you the jurors declare that the
20 guilt of this defendant has been established beyond a
21 reasonable doubt. Then that protective shield has been
22 pierced. It falls away from the defendant and it no longer
23 affords protection.

24 The presumption of innocence is sufficient to
25 acquit a defendant of the crime charged against him unless

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2 it is overcome by evidence that satisfies your mind beyond
3 a reasonable doubt of his guilt, and unless you are
4 satisfied, it is your sworn duty to declare the defendant
5 not guilty.

6 If, on the other hand, you do not have a
7 reasonable doubt as to his guilt, it is your sworn
8 obligation to find the defendant guilty.

9 Now let's go into reasonable doubt. There
10 is no mystery about it. An intelligent high school student
11 can get its full significance. What does the law mean
12 by reasonable doubt?

13 How much evidence does the government have to
14 place before the jury in any criminal case? Must it be
15 evidence beyond all possible doubt? No, absolutely not.
16 The words are "reasonable doubt," and they mean that
17 there is a doubt founded in reason, not imaginary, but
18 founded in reason and arising out of the nature of the
19 evidence in the case or the lack of evidence in the case.
20 It means a doubt which a reasonable person has after
21 carefully weighing all the evidence. It means a doubt
22 that is substantial and not shadowy. A reasonable doubt
23 is a fair doubt, a doubt which appears to your reason, your
24 judgment, your common sense, your understanding, and
25 arising from the state of the evidence. A reasonable doubt

1 chap 15

2 is a doubt that would cause you to hesitate to act in
3 important matters in your own lives.

4 A defendant is not to be convicted on suspicion,
5 conjecture or even impressive evidence which does not
6 rise to the dignity of significant persuasiveness. Reason-
7 able doubt is not caprice, whim, speculation. It is not
8 an excuse to avoid the performance of an unpleasant duty.
9 It is not sympathy for a defendant or a desire to uphold
10 the government. . .

11 If after a careful and impartial consideration
12 of all the evidence in the case from start to finish
13 you can candidly and honestly say that you are not satis-
14 fied of the guilt of a defendant and that you do not
15 have an abiding conviction of his guilt which amounts to
16 a moral certainty, then you have a reasonable doubt, and
17 in that circumstance it is your duty to acquit.

18 On the other hand, if after such a fair and
19 impartial consideration you can candidly and honestly
20 say that you are satisfied of the guilt of the defendant,
21 that you do have an abiding conviction of his guilt which
22 amounts to a moral certainty, I mean such a conviction or
23 certainty as you would be willing to act upon in important
24 and weighty matters in your own personal affairs in your
25 own private lives, then you have no reasonable doubt, and

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2 in that circumstance it is your sworn obligation to con-
3 vict.

4 One final word on this subject of reasonable
5 doubt. Reasonable doubt does not mean a positive certainty
6 or beyond all possible doubt. This is not a mathematical
7 problem you have got before you. You are dealing with
8 human beings, the flesh, the bone, the tissue. If the
9 rule were you have to be satisfied beyond all possible
10 doubt few men, however guilty they might be, would ever
11 be convicted, for it is practically impossible for a person
12 to be absolutely and completely convinced of any controverted
13 fact which by its very nature is not susceptible of
14 mathematical certainty.

15 And so in consequence the test in the
16 criminal case is that it is sufficient if the guilt of
17 the defendant is established beyond a reasonable doubt,
18 not beyond all possible doubt.

19 Now, let's go to the indictment. Bearing these
20 keystone propositions of law that I have given you with
21 every molecule of earnestness that I can summon, just
22 take a look at what we have here in this particular case.

23 The indictment contains two counts. Each
24 count charges the defendant Robert A. Gubelman with a
25 separate violation of the same law or statute.

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2 That law reads in pertinent part as follows:

3 "Any inspector authorized to perform any of
4 the duties prescribed by the Federal Meat Inspection Act
5 who shall receive or accept from any person, firm or
6 corporation engaged in commerce any gift, money or other
7 thing of value given with any purpose of intent whatsoever
8 shall be" guilty of a crime.

9 What is the purpose of that Act? Congress
10 has said that the Meat Inspection Act is necessary in order
11 to protect the health and welfare of consumers. In part,
12 the statutory purpose is found in these words:

13 "Meat and meat food products are an important
14 source of the Nation's total supply of food. They are
15 consumed throughout the Nation and the major portion
16 thereof moves in interstate or foreign commerce. It is
17 essential in the public interest that the health and
18 welfare of consumers be protected by assuring that meat
19 and meat food products distributed to them are wholesome,
20 not adulterated, and properly marked."

21 And so Congress has made it a crime for a
22 federal meat inspector to receive or accept money from
23 any person, firm or corporation engaged in interstate
24 commerce. The clear purpose of this statute is to protect
25 the public from the consequences of corruption in public

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2 service. This is necessary so that the community may
3 have the benefit of objective evaluation and unbiased
4 judgment on the part of those who participate in the
5 making of official decisions and who have power over
6 other citizens.

7 There are three obvious dangers to the public
8 that this statute seeks to prevent. One danger is that
9 unsanitary and unwholesome meat could be sold if meat
10 inspectors are not vigilant. A second danger is that
11 meat packers who pay money to meat inspectors will receive
12 better treatment from the inspector than packers do who
13 do not make these payments. Another danger is that if meat
14 inspectors take money from the people they are regulating
15 that might cause the public to believe that other public
16 officials are corrupt, and that belief threatens the heart
17 of our system of government.

18 It has been observed, and this is what you
19 should consider, that society deals sternly with bribery,
20 which would substitute the will of an interested person
21 for the judgment of a public official as the controlling
22 factor in official decisions. The statute plainly pro-
23 scribes such corrupt interference with the normal and
24 proper function of government itself.

25 I want to read the indictment to you. You may

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2 have a copy of the indictment when you retire to deliberate

3 In fact, it is my policy to send not only the indictment

4 into you, but also all the exhibits. I do not wait for

5 the jury to call for them.

6 "The grand jury charges:

7 "1. The Federal Meat Inspection Act, enacted

8 on December 15, 1967 as Title 1 of the Wholesome Meat

9 Act, requires the Secretary of Agriculture to provide

10 for the inspection of establishments where meat and meat

11 products are processed.

12 "2. At all times relevant to this indictment,

13 the defendant Robert A. Gubelman Sr. was an inspector,

14 officer and employee of the United States Department of

15 Agriculture Meat and Poultry Inspection Program, authorized

16 to perform the duties required by the Federal Meat Inspection

17 Act of 1967.

18 "3. At all times relevant to this indictment,

19 Plaut & Stern Incorporated, located at 524 Westchester

20 Avenue, Bronx, New York, was engaged in interstate com-

21 merce and was inspected by inspectors, officers and employees

22 of the United States Department of Agriculture Meat and

23 Poultry Inspection Program pursuant to the Federal Meat

24 Inspection Act of 1967.

25 "4. At all times relevant to this indictment,

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2 Master Purveyors Incorporated, located at 841 Washington
3 Street, New York, New York, was engaged in interstate
4 commerce and was inspected by inspectors, officers and
5 employees of the United States Department of Agriculture
6 Meat and Poultry Inspection Program pursuant to the Federal
7 Meat Inspection Act of 1967."

8 Now, with that introduction, now comes Count One
9 The introduction tells you about the Federal Meat Inspection
10 Act. It tells you about this defendant being an inspector
11 of the Department of Agriculture at all times mentioned
12 in the charge. It tells you that Plaut & Stern were engaged
13 in interstate commerce at all the relevant times. It
14 also tells you that Master Purveyors was engaged in inter-
15 state commerce. And both Plaut & Stern and Master
16 Purveyors were inspected by inspectors from the Department
17 of Agriculture.

18 Now, with that introduction, comes the charge
19 itself.

20 "Count One. The grand jury further charges:

21 "During the approximate time periods listed
22 below, in the Southern District of New York, the defendant
23 Robert A. Gubelman Sr., unlawfully, willfully and know-
24 ingly did receive and accept from Master Purveyors Incorp-
25 orated money and other things of value, that is, approximate

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2 \$25 weekly.

3 "Approximate time periods" -- and I stop
4 to emphasize "Approximate time periods" -- "August 20th
5 through November 25, 1972, December 10, 1972 through
6 January 6, 1973."

7 The next count. There are two counts, there
8 are two charges.

9 "During the approximate time periods listed
10 below, the grand jury further charges, in the Southern
11 District of New York, the defendant Robert A. Cubelman Sr.
12 unlawfully, willfully and knowingly did receive and
13 accept from Plaut & Stern Incorporated money and other
14 things of value, that is, approximately \$25 weekly.

15 "Approximate time periods, April 17th through
16 April 20, 1973, May 1st through May 12, 1973, September 2nd
17 through September 15, 1973, November 27th through
18 November 30, 1973."

19 That is simple. It is clear. What must the
20 government prove beyond a reasonable doubt? As to each
21 count its proof must be the same on each of these three
22 elements. Actually, let me alter the number and say
23 there are four elements, four factors, four divisions,
24 so to speak, and there must be proof beyond a reasonable
25 doubt on each one of those factors, on each one of those

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2 divisions or on each one of those elements. What is
3 the first thing that the government must prove beyond
4 a reasonable doubt?

5 First, you must find that this defendant,
6 Robert Gubelman, was an inspector with the United States
7 Department of Agriculture. I don't think you are going
8 to have much difficulty with that.

9 Second, you must find that the person,
10 firm or corporation alleged to have given the money to
11 Mr. Gubelman was engaged in interstate commerce and that
12 its meat was inspected by inspectors of the United States
13 Department of Agriculture. In this case it is not con-
14 tested that these corporations were engaged in inter-
15 state commerce and their meat was inspected according to
16 law. So I do not think you are going to have much
17 difficulty with that.

18 Now we come to the third element that must
19 be established beyond a reasonable doubt. You must find
20 that Mr. Gubelman accepted money from the person, firm
21 or corporation, you must find that the defendant accepted
22 the money in connection with or arising from his official
23 duty. The purpose or intent with which the money was
24 given and with which it was accepted is not relevant to
25 a finding of guilt. If he was an inspector at the time

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2 and if the company was engaged in interstate commerce
3 and if he took money, no matter for what purpose, the
4 taking of the money under this section, if a jury is
5 convinced beyond a reasonable doubt, establishes the
6 guilt required by law.

7 Let me pause for a while. There are various
8 sections of bribe taking. There is no charge here
9 that this defendant looked away when he should have been
10 looking at something and getting it corrected. There is
11 no charge here that he undertook to avoid the performance
12 of a duty. But that doesn't make the charge fatal.
13 He is charged under that section of the law that says
14 that the mere taking of the money, without looking away,
15 without doing anything corrupt or improper, the very
16 taking of the money constitutes the offense.

17 Have I driven that home?

18 The law says it is a crime for an inspector
19 to accept money if it is given for any purpose or intent
20 whatsoever. If an inspector accepts money in connec-
21 tion with his official duty it does not make any difference
22 what purpose was in his mind or in the giver's mind.
23 Money accepted by an inspector in connection with his
24 official duties from a company he was inspecting is
25 sufficient to establish the crime charged.

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2 It is not a defense that the defendant was
3 not influenced in his work and would have inspected just
4 the same whether he took money or did not. It makes no
5 difference whatever. It makes no difference that he was
6 a good or efficient inspector and received commendations
7 for his work. If he took money knowing he was taking
8 it and took it in connection with his work as an
9 inspector at the meat plants he was officially assigned
10 to inspect then he is guilty, provided, of course, the
11 evidence satisfies you beyond a reasonable doubt.

12 And the fourth element or factor that must
13 be established beyond a reasonable doubt is that you must
14 find that the inspector received the money knowingly and
15 willfully, that is, he knew what he was doing when he took
16 it and he did not take it merely by accident or mistake
17 or misunderstanding as to what he was doing.

18 Ten minute recess.

19 (Recess.)

20 THE COURT: There has been mention about
21 exact dates and amounts, are not required, and that is so,
22 that is the law. The exact dates and the exact amounts
23 are not critical. For example, if the indictment charges
24 \$25 and he actually received \$50 or vice versa or if he
25 received \$2, the amount does not decide it.

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2 Don't you see that the law is not the ass
3 that so many people are so ready to denounce. They
4 know human nature is such that when you start taking,
5 even if you do nothing for it, the next step is to take
6 for doing something about it. That is as old as man. It
7 does not matter if he did not take money every day of
8 the week or every week of the month or if they did not
9 follow one week after another. If he took money within
10 a date that is a reasonably fixed date, a date that is
11 not far out of actuality, then it is sufficient.

12 Now, what does the law mean by "knowingly and
13 willfully"? Well, I think that is all self-evident, but
14 I have got to charge it to you. What does the law mean?
15 It means pretty much what your common sense tells you the
16 words "knowingly and willfully" would stand for.

17 In considering each of these two counts you
18 must determine whether the government has proven beyond
19 a reasonable doubt that Mr. Gubelman acted knowingly and
20 willfully.

21 The words "knowingly and willfully" just
22 simply mean this: The government does not have to
23 show that this defendant knew he was breaking a particular
24 law before he can be convicted of a crime. They do not
25 mean that the government has to show that Mr. Gubelman

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2 intended to profit at the expense of the government or
3 any other person. Nor do they have anything to do
4 with Mr. Gubelman's personal or private reasons for
5 violating the statute, for if after considering all the
6 evidence in accordance with my instructions to you you
7 come to the conclusion that he violated the statute, in
8 that event his personal or private reasons for violating
9 the statute are absolutely of no consequence so far as
10 his guilt is concerned.

11 An act is done knowingly if it is done
12 voluntarily and purposely and not because of mistake, acci-
13 dent, negligence or some other innocent reason. An
14 act is done willfully if it is done knowingly and
15 deliberately and with an evil motive or purpose. Unlawfully
16 means contrary to law. Hence, to do an act unlawfully
17 means to do something contrary to law.

18 In essence, then, the phrase knowingly,
19 willfully and unlawfully means doing something in a volun-
20 tary and deliberate fashion. That is all there is to that.

21 The intent to take it, that must be proved
22 beyond a reasonable doubt. He intended to take it and
23 did take it.

24 I should tell you something about circumstantial
25 evidence. I believe in giving examples. They teach

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2 law students by the example method. Why not teach the
3 jury by example method.

4 I am looking at you right now. That is direct
5 evidence. I see you with my own eyes. Suppose before
6 I came out on the bench this afternoon I said to Mr. Bowen,
7 the clerk of this court, "Edsel, is the jury here?" And
8 he says, "Yes, Judge." That is circumstantial evidence
9 that you are here. I did not see you with my own eyes,
10 but under those circumstances one can conclude that the
11 jury is here and ready to come out.

12 Let me give you another example. This is a
13 bright, pleasant day. This is an example that judges
14 give with great frequency and it does point up what is
15 meant by circumstantial evidence. You came in, the sun
16 was shining. You couldn't look out the window, let's
17 say. Suddenly somebody comes in here and they are
18 dripping wet. The person sits down and a veritable
19 pool or puddle forms at the feet of the person. You did
20 not see the rain, but that is circumstantial evidence
21 that it has been raining. If you saw the rain with your
22 own eyes it would be direct evidence. That is all
23 there is to it.

24 And so, to use the language of the law, proof
25 that is offered of objective facts and circumstances

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2 in which one in terms of common experience can rationally
3 and logically conclude the ultimate fact. What do you
4 like, that language, or do you like the simple examples
5 I gave you? I think a combination of both is the best
6 that we can do for you.

7 This is important as well. If circumstantial
8 evidence is believed it is of no less value than direct
9 evidence. There is no law that says you can only convict
10 on direct evidence. The law, to the contrary, says you
11 can convict on direct and circumstantial or circumstantial
12 being most of the total proof and little direct. That
13 is up to you. Both are evidence and both can be weighed,
14 assessed and determined. Regardless of the type of
15 evidence, direct or circumstantial, the only requirement
16 is that the totality of the proof, circumstantial or
17 direct, or all of one or all of the other, must be beyond
18 a reasonable doubt.

19 Now, you have heard a great deal of talk
20 about similar acts. What does that mean? Acts similar
21 to those charged in the indictment. Why did we allow that
22 in? Those other acts involving Lustgarten and Rosenman
23 are not charged here. They are not before you. Then why
24 does the law allow it? And if you listen to me I think
25 I can make it clear, and if you do not understand, it is

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2 my policy to invite the jury to speak up and say, "Judge,
3 I don't quite get it."

4 Undoubtedly you recall the testimony of
5 Mr. Lustgarten and Mr. Rosenman. The criminal acts
6 about which they testified **are not among the criminal**
7 **charges** lodged against them in the indictment before
8 you. So I ask again why then was their testimony received?

9 The law says simply this: Acts and conduct
10 similar to those charged in the indictment, if you do
11 so find, may be considered circumstantial evidence on
12 the issue of this defendant's criminal knowledge,
13 intent, plan and preparation with respect to the charges
14 embraced in the indictment. It goes to his intent.
15 However, this evidence is limited to and may be con-
16 sidered solely on these issues of criminal intent or
17 knowledge or plan or preparation. That is the only
18 reason it is allowed in. This similar act evidence
19 may not be used as evidence that this person is a bad
20 person and therefore committed the bad acts charged against
21 him.

22 Is that clear?

23 The defendant took the stand. What has the
24 law to say on that? The law permits a defendant at his
25 own request to testify in his own behalf. I should tell

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2 you, and I think I told it to you possibly when you were
3 being selected, that if a defendant chooses not to take
4 the stand and chooses not to give any evidence in his
5 behalf he has a perfect right so to do and no jury has
6 the right under law to hold it against him and if any
7 jury did that the jury would be doing an illegal act.
8 There is no law that says a defendant must take the stand
9 or offer any proof and not for an instant can it be held
10 against him. But in this case the defendant did take
11 the stand and he did testify and the law therefore has
12 something to say with regard to a defendant who chooses
13 to testify.

14 His testimony is before you. You must
15 determine how far it is credible or believable. The deep
16 personal interest which every defendant has in the outcome
17 of his case should be considered in determining the
18 credibility or believability of his testimony. You are
19 instructed as a matter of law that interest creates a motive
20 for false testimony, that the greater the interest the
21 stronger is the temptation and that the interest of a
22 defendant is of a character possessed by no other witness
23 and is therefore a matter which may seriously affect
24 the believability that should be given to his testimony.

25 While this important warning must be kept in

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2 mind as to the credibility or believability of a defendant's
3 testimony, it does not necessarily follow that his testimony
4 is automatically unworthy of acceptance.

5 I should think the biggest issue before you
6 is to determine the credibility -- and we say credibility,
7 we mean what credit do you give to it; it is another
8 way of saying believability -- you are going to have
9 to determine the credibility or believability of the
10 witnesses who testified. You will consider the bias or
11 interest of the witness, his or her candor, the intelli-
12 gence as you observed it, the extent to which it has
13 been corroborated or contradicted, whether there has
14 been any change in the testimony, and so on.

15 If you think a witness has lied you can
16 ignore the testimony completely. But a witness may
17 be mistaken as to a part and accurate as to a part and
18 you will have to choose which part of which witness' testi-
19 mony you believe. In sizing the witnesses up in your
20 search for the truth be guided by your plain everyday
21 common sense. And therein lies your strength. You
22 saw each witness. You observed the manner of his giving
23 testimony. Out of the welter of testimony you are called
24 upon to determine the factual issues in the case. Thus
25 upon all the evidence you the jury are to resolve the

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2 conflict.

3 To acquit the defendant you need not find,
4 I repeat, that any witness against him has lied. The
5 test always is are you satisfied beyond a reasonable
6 doubt from the entire trial record, in accordance with
7 the Court's instructions, of the guilt beyond a reasonable
8 doubt of the defendant on trial. If upon a cautious
9 and careful examination you are satisfied that the witnesses
10 have given a truthful version and the government has
11 sustained its burden of proof beyond a reasonable doubt
12 in all of the respects as outlined in my instructions,
13 then you have sufficient proof on which to bring in a
14 verdict of guilty. Otherwise the defendant is entitled
15 to an acquittal.

16 Ask yourselves, how does his testimony, referring
17 to every witness, impress me? What degree of credit
18 you should give the witness' testimony should be determined
19 by his conduct, his manner of testifying, his relation
20 to the controversy, his bias or impartiality, and the
21 reasonableness of his statements. Is the witness inter-
22 ested in the outcome of the case? Is there a motive to
23 testify falsely? Was it shown to exist? Was the witness
24 mistaken? Was he correct? In other words, what you try
25 to do, to use the vernacular, is to size up a person, just

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2 as you would in any important matter when you are under-
3 taking to determine whether or not who you are dealing with
4 is truthful, candid and straightforward.

5 A witness may be discredited or impeached by
6 contradictory evidence that some other time he has said
7 or done something or failed to do or say something which
8 is inconsistent with his present testimony. The testi-
9 mony of any witness whose self-interest is regarded
10 convincing to you is to be considered with great caution
11 and weighed with great care. You should consider the wit-
12 ness' intelligence, motive, state of mind, demeanor
13 while on the stand. You should consider his candor or
14 lack of candor, his possible bias, his means of information,
15 and the accuracy of his recollection.

16 If you believe that any witness has been
17 impeached and thus discredited it is your exclusive province
18 to give that witness' testimony such credibility as you
19 think it deserves. Your determination of the credibility
20 of a witness very largely depends upon the impression
21 he made upon you and the conviction with which he testi-
22 fied, the way he testified. Did it come across to you?
23 Did it impress you? Did it touch you? Did it affect
24 you? That is for you to consider, not how that witness
25 impresses any of the rest of us. The fact that a witness

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2 is an official or an employee of the government does not
3 by itself mean that you should give greater or special
4 credit to his testimony. The testimony of any such
5 witness should be weighed and scrutinized in the same
6 manner as any other witness who has testified in this case.
7 You judge their testimony in the same way, taking into
8 account interest or any factor which may have influenced
9 them to color or fabricate their testimony.

10 Examine with care for the clean or impure
11 motive that prompts the testimony of a witness. Ask
12 yourselves after each witness has testified what was
13 the witness' motive? Did the witness commit perjury
14 in order to get the defendant convicted? Or was his
15 testimony induced by an unflinching desire to tell the
16 truth? Ask yourselves whether the testimony was induced
17 because of a dislike of the defendant or for revenge or
18 for any other impure motive. Does the trial record
19 point to a wrongful reason which would prompt the testimony?
20 Or do you believe that a witness testified as he knew the
21 facts to be and scrupulously observed his oath. All of
22 this is for you and you alone to evaluate.

23 And so you see a study of the motive for
24 testimony may be a strong indicator, if not a conclusive
25 one, as to where truth lies and falsity exists.

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2 The chief government witnesses were employees
3 or officers of corporations that were admitted accomplices
4 in the crimes charged and in other crimes of
5 giving money to government employees. In evaluating their
6 testimony you should view it with caution and scrutinize
7 it carefully. Their association with criminal
8 activities may show defects in their own character
9 which may make them more likely to lie. They may also
10 be seeking to curry favor with the government and receive
11 favorable treatment to avoid their own prosecution and
12 punishment of their corporations because the government
13 could put them out of business by taking away their
14 licenses and their inspection number. There was evidence
15 that they individually were not criminally prosecuted.

16 Now, there is nothing wrong with the govern-
17 ment using such testimony and whether you like it or
18 not is not the question. You are not trying the government
19 for the way they handle witnesses. Just consider it on
20 the issue of credibility, of believability, of those
21 witnesses who signed the statements relating to non-
22 prosecution.

23 You might also take into consideration the
24 fact that under certain circumstances evidence can only
25 be elicited from the bribe giver or the evidence

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2 against the bribe taker will never come to light.

3 Whatever they may be it would be wrong to
4 say that we did not have before us persons who did give
5 the bribe. Well, you judge them under all the circum-
6 stances. How did they impress you? Were they bold
7 about it, indifferent, contrite? How did they come
8 across? And above all, you take the totality of the
9 evidence and you say, "This is what the Judge says we
10 have got to consider. We have got to evaluate it. And
11 if after evaluating it we find that the sum total, putting
12 it all together, shows guilt, we have got to, under our
13 oath, convict. If, on the other hand, we have a reason-
14 able doubt, we must acquit."

15 Don't you see in a great number of cases
16 the government is hard put to it. But that does not justify
17 that does not say just because the government has a tough
18 time getting the proof that therefore we should convict.
19 No. You convict only if that testimony convinces you
20 beyond a reasonable doubt of the guilt of a defendant.
21 At the same time, one must bear in mind that in the most
22 serious types of crimes there are informers, there are
23 those from the gutter, there are those who never came face
24 to face with a moral principle and recognized it as such,
25 and yet such persons may very well be called to the stand,

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2 with all the limitations that they possess, they may
3 nevertheless, with respect to a certain item involved in
4 the trial of a particular case, speak the truth or speak
5 falsely.

6 And so the issue is always for the fact-finders
7 whether taking into consideration all the testimony,
8 from polluted sources, from clean sources, when you add
9 it all up, are you convinced beyond a reasonable doubt,
10 and if so, your oath compels conviction, and if not, it
11 compels an acquittal.

12 Now, a few words about character evidence.
13 There was no testimony before you, which is quite evident,
14 but I am compelled to mention it when it comes to charac-
15 ter evidence, there was no testimony before you as to
16 the reputation of this defendant. Through the testimony
17 of persons who know him, the defendant has offered evidence
18 of good general reputation for truth and integrity. You
19 should consider such evidence given under oath along
20 with all other evidence in the case. If, however, you
21 are satisfied beyond a reasonable doubt of the defendant's
22 guilt, evidence of a prior good reputation does not justify
23 or excuse the offense. It is the law that evidence of
24 a defendant's reputation, however, may justify your belief
25 that it is improbable that a person with good moral

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2 character would willfully commit such a crime.

3 And now, ladies and gentlemen, in thanking
4 you for your rapt attention, which is another compliment
5 to you for your industry and your deep sense of caring,
6 I bring the charge to a conclusion. When we lay down
7 as law, the letter, the spirit of the law, that every
8 defendant on trial is presumed to be innocent until the
9 government fulfills its obligation, proving him guilty
10 beyond a reasonable doubt, and all those other propositions
11 of law that I have tried to emphasize and to delineate
12 for you, each one equally sacred, we must not lose sight
13 of the rights of the other party in this litigation, the
14 plaintiff, the government. We must bear in mind, and
15 I so charge you, an equally vital concept of justice, de-
16 fined in classic fashion by the Supreme Court of the
17 United States, and hence the law of the land: "Justice,
18 though due to the accused, is due to the accuser also."

19 If you find the law has not been violated
20 you should not hesitate for any reason to return a
21 verdict of not guilty. That would be your sworn obliga-
22 tion. But on the other hand, if you should find that
23 the law has been violated as charged, you should not
24 hesitate because of sympathy or any other reason to
25 render a verdict of guilty, because in our concept of what

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2 is required here that would be the justice of the case,
3 if you so decide. And if that is your decision it will
4 also constitute a clear warning that a crime of this
5 character may not be committed with impunity. The public
6 is entitled to be assured of this.

7 All of these things that I have mentioned
8 follow only if, as and when you are satisfied beyond a
9 reasonable doubt as to each of the elements which I
10 told you the law makes imperative in order to sustain
11 each of the two counts set forth in the indictment.
12 The fact that there are two counts, each one of them must
13 be considered separately as though it were the only one
14 before you. If you should find neither one of them is
15 sustained you say not guilty on both. If you find both
16 of them are sustained you will so pronounce it, Madam
17 Forelady. If you find that there is guilt on one and
18 not on the other you so pronounce it. Each are separate
19 criminal charges and each requires a separate verdict.
20 One, you remember, deals with Plaut & Stern and the other
21 with Master Purveyors. They are two distinct crimes
22 and they must be considered from start to finish by you
23 as to each one separately, each of the counts separately.

24 Under your oath as jurors you cannot and must
25 not allow a consideration of the punishment which may be

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2 inflicted upon the defendant if he is convicted to
3 influence your verdict in any way. If you did that you
4 would clearly violate your own oath. That duty rests
5 exclusively with the Judge, who upon the basis of a
6 full official report dealing with the defendant's
7 general life pattern and behavior has the duty to impose
8 sentence. That has nothing to do with you. Your
9 burden is heavy enough.

10 Each juror is entitled to his own opinion.
11 You should, however, exchange views with your fellow
12 jurors. That is the very purpose of jury deliberation.
13 Twelve jurors, not one, not three, not five and not eleven.
14 You have a right to your opinion, but you must discuss
15 it with one another. You must give each the benefit of
16 your views. And so the law says that you must listen
17 to the arguments of your fellow jurors. You must consult
18 with one another. You must reach agreement based solely
19 and wholly on the evidence, if you can do so without violence
20 to your own individual judgment, and employ that high
21 degree of genuine courage you justifiably expect, especially
22 in these perilous times, from others. You should not
23 hesitate to change an opinion which upon a consideration
24 of all the evidence with your fellow jurors appears
25 erroneous. However, if after carefully considering all

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CHARGE TO THE JURY

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2 the evidence and the arguments of your fellow jurors
3 you conscientiously entertain a view that differs from
4 others, you are not to yield your convictions simply be-
5 cause you are outnumbered or outweighed.

6 The exhibits will be gathered and sent into
7 you promptly together with a copy of the indictment.
8 If to help you in your deliberations you wish a point
9 or points in the testimony read please specify exactly
10 as possible just what point you wish the official
11 reporter to locate. It is very difficult, but it must
12 be done if you wish it, and that portion that you require
13 will be read to you no matter how much time it takes.

14 Your oath, ladies and gentlemen of the jury,
15 sums up your duty, and that is without fear or favor to
16 any man you will well and truly try the issues between
17 this defendant and the United States of America according
18 to the evidence given to you in open court and the laws
19 of the United States. That is exactly what you swore to
20 do. I have every confidence that you will fulfill your
21 sworn obligation as American ministers of justice to
22 render a true verdict based solely and exclusively
23 on the facts and on the law in this case.

24 If the government has carried its burden in
25 accordance with the evidence and the law as to the defendant

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CHARGE TO THE JURY

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2 you must not flinch from your sworn duty, you must
3 convict. But if it has failed to carry its burden as
4 to the defendant your sworn duty is to acquit. And
5 this I say with measured tones. You have undoubtedly
6 talked about justice in your homes and in your daily
7 affairs, in your comings and in your goings, as is your
8 inalienable right. The point is now each of you sits
9 in the seat of justice. How will you do? Apply your
10 criticism of justice to yourselves. Will you call them
11 as you see them? Will you do justice as between the
12 government on the one side and this defendant on the
13 other solely on the facts and on the law, exactly what
14 you swore to? This Judge has every confidence that you
15 will do exactly that

16 If you will be kind enough to excuse counsel
17 and the Judge, we will be right back.

18 (In the robing room.)

19 THE COURT: Any exceptions or requests by
20 the government?

21 MR. IASON: Your Honor, I didn't hear the Judge
22 instruct the jury that the verdict must be unanimous.
23 I may have missed it, but I didn't hear it, sir.

24 THE COURT: You may be right. I will see to it.

25 MR. PRINCE: I have no further requests.

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THE COURT: Let's go.

(In open court.)

THE COURT: I am not sure, and even though I duplicate, I want to be sure that I told you that the verdict of a jury must be unanimous. You cannot be eleven to one or eight to four. It must be unanimous. Each juror must vote and it must be unanimous.

Very well, Mr. Clerk, will you please proceed.

(Two marshals were duly sworn.)

THE COURT: Will counsel be good enough to gather the evidence, the documents, the exhibits, and send them in.

Will you please bear with me another minute. Miss Furman and Mr. Schneider, you were the alternates and I want to tell you that now that the jury is ready to enter upon its deliberations there is no need to detain you, but I would be remiss if I didn't thank you for what I know was typical of everybody, and that is that I saw you concerned, you were worried on occasion, you were reflective, you cared, you did give a damn about what was going on, and I can't tell you how encouraging that is to a Judge and to counsel.

May I thank you and will you be good enough to leave the box and remain in the courtroom for just a

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2 few minutes. Thank you again.

3 I have said this hundreds of times and I
4 hope I will be spared to say it more times and that is
5 when it comes to a jury trial justice rides with you.
6 That's it.

7 Take the jury. Announce a recess.

8 (At 3:55 p.m. the jury retired to deliberate
9 upon a verdict.)

10 (8:55 p.m., in open court.)

11 THE COURT: Please proceed, Mr. Clerk.

12 (Jury roll called -- all present.)

13 THE CLERK: Madam Foreman, have you agreed
14 upon a verdict?

15 THE FORELADY: Yes, sir.

16 THE CLERK: How do you find the defendant on
17 Count One?

18 THE FORELADY: Guilty.

19 THE CLERK: Count Two?

20 THE FORELADY: Guilty.

21 THE CLERK: Members of the jury, listen to
22 your verdict as it stands recorded. You say you find
23 the defendant guilty on Count One and Two.

24 (Each juror, upon being asked, "Is that your
25 verdict," answered in the affirmative.)

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JUDGMENT APPEALED FROM

United States District Court for

United States of America vs.

DEFENDANT

ROBERT A. GUBELMAN, SR.

SOUTHERN DISTRICT OF NEW YORK

DOCKET NO. (s) 76 Cr. 1041

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (6/74)

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH	DAY	YEAR
5	11	77

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

C. John Prince, Esq.

(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly did receive and accept money and other things of value, approximate Time Periods August through November 25, 1972-December 10, 1972 through January 6, 1973- April 17, through April 20, 1973-May 1, through May 12, 1973-September 2, through September 15, 1973-November 27 through November 30, 1973 (Title 21, United States Code, Section 622.)

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWO (2) YEARS on Counts 1 and 2 to run concurrently.

SENTENCE
OR
PROBATION
ORDER

The defendant is ordered to surrender may 24, 1977 at 10:am. Room 506
The defendant is released on his own recognizance pending surrender.

SPECIAL
CONDITIONS
OF
PROBATION

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JUDGMENT APPEALED FROM

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

COMMITMENT
RECOMMEN-
DATION

MICROFILM

MAY 4 3 1977

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

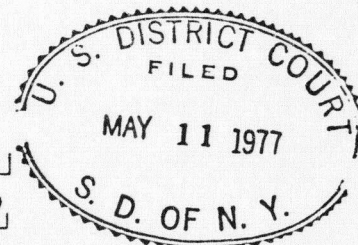
☒ U.S. District Judge

☐ U.S. Magistrate

Hon. Irving Ben Cooper

Date

5
5-19-77



A-55
NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Docket Number

FILED
May 17 11 59 AM '77
576 CE 1041

- v -

HON. Ben Cooper
(District Court Judge)

ROBERT A. GUBELMAN, SR.,

NOTICE OF APPEAL

Notice is hereby given that Robert A. Gubelman, Sr. appeals to
the United States Court of Appeals for the Second Circuit from the ☐ Judgment ☐ order ☒ other
(specify) Sentence entered in this action on May 11, 1977.
(Date)

Date May 12, 1977

To: Robert B. Fiske, Jr.
United States Attorney
Southern District of New York

C. John Prince
(Counsel for Appellant)
Address 89-02 Sutphin Blvd.
Jamaica, New York 11435

Phone Number 212-658-5500

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY)

TRANSCRIPT INFORMATION - FORM B

► QUESTIONNAIRE

► TRANSCRIPT ORDER

DESCRIPTION OF PROCEEDINGS
FOR WHICH TRANSCRIPT IS
REQUIRED (INCLUDE DATE).

☐ I am ordering a transcript
☒ I am not ordering a transcript
Reason:
☐ Daily copy is available
☐ U.S. Attorney has placed order
☒ Other. Attach explanation

Prepare transcript of
☐ Pre-trial proceedings
☐ Trial
☐ Sentence
☐ Post-trial proceedings

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) Method of payment ☐ Funds ☐ CJA Form 21

ATTORNEY'S signature

DATE

C. John Prince

5-17-77

► COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and
forwarded to Court of Appeals.

Date order received

Estimated completion date

Estimated number
of pages.

Date _____

Signature _____

(Court Reporter)

ORIGINAL

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss .

ALLEN Quinton HAYES, being duly sworn,
deposes and says that deponent is not a party to the action,
is over 18 years of age and resides at 162 Navy Walk
Apt 6A Brooklyn NY 11201.

That on the 3 day of OCTOBER, 1977,
deponent personally served the within APPENDIX

upon the attorneys designate
indicated parties in this
stated which are those tha.
attorneys for that purpose

who represent the
and at the addresses below
been designated by said

By leaving 1 true copies of same with a duly
authorized person at their designated office.

~~By depositing true copies of same enclosed
in a postpaid properly addressed wrapper, in the post office
or official depository under the exclusive care and custody
of the United States post office department within the State
of New York.~~

Names of attorneys served, together with the names
of the clients represented and the attorneys' designated
addresses.

ROBERT B. FISKE, JR.
U.S. Attorney for the
Southern District of New York
Attorney for Plaintiff-Appellee
One St. Andrew's Plaza
New York, N.Y. 10007
(212) 791-9156

Sworn to before me this

5 day of October, 1977

Allen Q. Hayes
Michael DeSantis

MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930908
Qualified in Queens County
Commission Expires March 30, 1979